House Energy and Commerce Committee
Subcommittee on Oversight and Investigation Hearing:
"Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury Insurance and Other Health and Welfare Issues"
November 17, 2005

Testimony Submitted by Don Amos, Executive Vice-President and Chief Operating Officer of Magna Entertainment Corp.

Chairman Whitfield and distinguished members, it is an honor to appear before this Subcommittee to help you to become informed on these important matters to the horse racing industry.

My name is Don Amos and I am the Executive Vice-President and Chief Operating Officer of Magna Entertainment Corp., ("MEC"). As an executive officer of a public corporation, my responsibility is to act in the best interests of our shareholders. In MEC's judgment, the best way to do this is to work with all stakeholders in our industry: owners, jockeys, trainers and breeders; to achieve the common good of improving horseracing in a very competitive landscape.

I have been associated with horses since childhood, showing Shetland Ponies in county fair competitions in rural Ontario, Canada. This evolved into owning and driving standardbred horses as a young adult. My association with the thoroughbred industry began in 1977 in Toronto, Canada. Currently, I am the owner and breeder of 16 thoroughbreds. Throughout my association with, and continuing education about, horseracing, I have come to admire many individuals. Talented trainers, who can develop young horses into high performance athletes will always have my greatest admiration. Further, as someone who at one time was an aspiring jockey, I must admit to this Subcommittee that I consider those who ride these animals to be fine tuned athletes, exhibiting great courage and respect for their competitive colleagues.

In my testimony, I will share with this Subcommittee the approach that MEC has taken in working with industry stakeholders to deal with the issues being investigated in these hearings. MEC believes that this approach is beneficial to the industry, especially to jockeys riding at MEC's tracks, and will ultimately be beneficial to our shareholders.

This testimony will begin with some background of MEC, its history, vision and operating principles. This will be followed by a summary of the steps taken in developing a one million dollar accident insurance program for jockeys. I will use the term "program" because this testimony will show that an appropriate level of coverage is only the starting point in promoting jockey safety. Finally, this testimony will briefly provide MEC's perspective on some of the other issues that have been raised in these hearings.

Background of MEC

MEC was formed in 1999 as a subsidiary of Magna International Inc. ("Magna"), currently the fourth largest manufacturer of automotive systems in the world. The Magna story began in 1957 when its founder, Frank Stronach, began a tool and die shop out of a garage in Toronto, Canada. The Company's revenues in the first year were Cdn $13,000. Today, Magna is a US $20 billion company, employing 81,000 employees worldwide.

Over the years, Frank Stronach became a major owner and breeder of thoroughbreds. As a businessman and entrepreneur, he saw an opportunity to transform thoroughbred racing into a global industry through the utilization of satellite and internet communication. This vision led to Magna's purchase of Santa Anita Park in 1998.

MEC became a public company in 2000 with Magna as its controlling shareholder. In 2003, Magna spun off its interest in MEC.

Today, MEC remains a publicly traded company, with Frank Stronach as its Chairman. Accordingly, the original vision for MEC continues today.

MEC's Principles

The fact that MEC began as a subsidiary of a manufacturing company exposed it to approaches not common to the racing industry. The foremost of these is a systematic approach to quality control and continuous improvement. The manufacturing environment, especially in automotive, is driven by measurables and auditing. Out of this environment Magna migrated these features into non-production areas such as employee relations and environmental management through the introduction of:

Employee Opinion Surveys;
Health and Safety Audits and Inspections; and
Environmental Audits and Inspections.

All of these vehicles drove the development of action plans for continuous improvement.

Further, Magna came to a common sense conclusion that success was based on balancing the interest of the stakeholders in a business: customers, investors and employees. The only way of achieving this balance is by respecting each stakeholder through open communications.

Finally, with its employees and managers, Magna emphasized one fundamental point: "No government, no company, no union can guarantee you job security. The best recipe for job security is for employees and management to work together in harmony, to provide a better product at a better price for our customers." This meant fostering collaboration and diffusing confrontation. As in the case of any successful relationship, whether as spouses, friends, parent – child, maintaining this approach is hard, but satisfying, work.

Mr. Chairman and members of this Subcommittee, this background has formed part of this testimony to answer one question. We are all products of the values we are taught and the experiences we have in life. The same is true in the life of a corporation. Throughout this testimony, some of you may wish to ask “Why did MEC decide to do that?” The answer I believe is found in knowing our background.

Operating in Today’s Racing Industry

Although MEC is confident in its vision to revitalize horseracing, the fact remains that this effort costs money.

As a result of the decline of horseracing over the last two decades, the tracks MEC acquired require significant capital expenditure. This has caused significant impact to MEC’s bottom line. But these expenditures are necessary to revitalize racing in our markets.

With respect to the state that horseracing has found itself in as an industry, there can be much discussion. The bottom line is there is no one cause; there is no one culprit; there is no value in finger pointing. We prosper together as an industry, we suffer together as an industry. All stakeholders have to bear some burden for the state this industry finds itself in.

The one basic point of the situation the industry finds itself in is that horseracing will never achieve greater prosperity if its stakeholders are confrontational. The only chance for this industry to revitalize itself is if all stakeholders, including ourselves, try to work together, balancing our respective interests, for the greater good of the industry.

On this note, the approach MEC has taken with respect to allocating our resources is in keeping with this philosophy.

Currently, MEC has made significant expenditures to modernize facilities such as Gulfstream Park to excite the consumer about our industry. But no Corporation can modernize all of its facilities at once. Accordingly, in our facilities that are not being overhauled, MEC‘s first priority with respect to capital spending is to ensure compliance with regulatory requirements. In our industry, this primarily centers on environmental issues, such as, the control of wastewater from the backstretch.

The next priority with respect to capital expenditure centers around the safety of both the horse and rider, whether it be by improvements to track surfaces, starting gates or equipment.

The fact is that as any corporation, MEC must prioritize its capital expenditures. Accordingly, our efforts must be gradual; with improvement being implemented on a steady and consistent bases. MEC is confident that this approach is ultimately viable and beneficial to customers, employees, jockeys, trainers and the horses at our facilities.

MEC Operations

As stated previously in this testimony, MEC has drawn upon its roots as a subsidiary of a manufacturing company to implement quality control and auditing programs.

Commencing in 2002, MEC launched a program which included:

Employee Opinion Surveys;
Horsemens’ Surveys;
Periodic Meetings with Employees and Horsemen;

Environmental Audits and Inspections; and
Health and Safety Surveys.

Just as in the case of the Magna experience, these initiatives resulted in the development of action plans to address deficiencies.

As in the case of any new initiative, there are many challenges to achieving successful implementation. But by maintaining our focus, MEC is beginning to see the start of a culture of continuous improvement. As in all things that achieve lasting effect, these initiatives are part of a sustained process of gradual change.

With respect to our health and safety audits, these are conducted by MEC's, workers' compensation carrier, Liberty Mutual, and are primarily focused on the safety of our employees. However, the sensitivity to safety being cultivated by this process extends to all of those at our facilities. As will be discussed in greater detail later in the testimony, our Jockey Accident Insurance carrier will be conducting loss control inspections commencing in 2006. MEC has every expectation that these inspections will have the same effect on improving jockey safety as have Health and Safety Audits on employee safety.

Jockey Accident Insurance

During 2004, the issue of the adequacy of jockey accident insurance became one of the key issues of this industry as a result of Gary Birzer's tragic accident.

MEC was invited to the Jockey Accident Insurance Summit organized by the National Thoroughbred Racing Association ("NTRA") which was held at Turfway Park outside of Cincinnati on November 22, 2004. Andrew Staniusz, Legal Counsel and Director of Employee Relations Programs for MEC, attended on the Company's behalf.

During this summit, a consensus emerged that the appropriate level of coverage at this time would be one million dollars. Further, the key issue that emerged was not availability of insurance, but how to make such coverage affordable. Finally, it was decided to engage the AIG firm, which provided workers' compensation coverage to jockeys in California, to explore the possibility of developing a program.

The NTRA held a second meeting in Chicago at Arlington Park in January 5, 2005 with representatives from AIG. What came from this meeting was an agreement by Churchill Downs Inc. ("CDI") and MEC to work together with AIG in trying to develop a program providing one million dollar coverage.

Over the next weeks, an approach was developed by CDI and MEC that was communicated to the NTRA group at Turfway Park on February 25, 2005. The approach presented provided for a co-pay structure whereby a track would pay a minimum of 70% of the total premium of a million dollar policy, and with horse owners and the Jockeys' Guild combined contributing a maximum of 30% of the cost.

MEC was attracted to a co-pay model because it is MEC's firm belief people have a different attitude to something they have to pay a portion for as opposed to something they get for free. By having to make a payment each time a horse is raced, the owner is reminded of the fact that there is a cost for a lack of safety.

The thinking behind having the remainder of the cost paid by the Guild rather than the Jockey is two-fold. First, there was cognizance of the fact that a mount fee would be a hardship to jockeys racing at smaller market tracks. Second, the Jockey Guild was receiving a mount fee from each track. Historically, these mount fees contributed towards the accident coverage that had been discontinued by the Guild.

From AIG's perspective, it is fair to say that it did not care how this policy was funded. It was prepared to provide enhanced coverage to all tracks in the U.S.

Although this is in no way an endorsement of AIG, there are distinct advantages in MEC's view of having at this time one major player in providing this coverage.

It is MEC's position that an appropriate level of coverage is only a starting point. The key is to use accident experience data, both frequency and severity, to develop comprehensive analysis of root causes of accidents which will develop loss control initiatives based on objective fact, rather than on anecdotal information.

One of the greatest obstacles to appropriate loss control with respect to jockey accidents historically has been the lack of appropriate information gathering of loss experience. By having one major player at this time, a body of loss experience data can be established to begin the process of loss control. Whether such loss control measures would be in equipment improvements, track modifications or new practices, it is only through objective analysis can this industry create a safer racing environment.

MEC encourages other insurers to enter this field. Afterall, competition is healthy. For the time being, however, the relationship with AIG is beneficial to the safety of jockeys.

As stated previously, a joint presentation was given by CDI and MEC to the NTRA group at Turfway Park on February 25, 2005. During this presentation the co-pay model was brought forward as a near term solution. As expected, the approach met resistance from those groups who were being asked to contribute. The meeting concluded on the basis that additional coverage was available through AIG and that industry stakeholders should continue to explore funding approaches.

MEC's Decision Regarding Jockey Accident Insurance

After further study, MEC decided to implement a one million dollar medical coverage policy for jockeys on a co-pay model with the affected track paying a minimum 70%, owners paying a maximum 20% and the Guild paying a maximum 10% Our analysis determined that a mount fee of $5.00 for the owner and $2.50 for the Guild would achieve the 20% and 10% levels. Any surplus would be applied to next year's contributions of owners and the Guild. If there were insufficient mounts at a track to realize the appropriate level of co-pay from the owners and the Guild, the track would make up the short fall. This is what we mean by a minimum contribution of 70% by the track.

MEC believes that any program must be designed to stand the test of time. Medical care costs will only increase over time. Today, one million dollars coverage seems appropriate. In the future it is likely to be insufficient. By predetermining the contributions on a 70 / 20 / 10 basis, MEC believes this is a sustainable model on a long term basis or until such time an alternate program is developed.

Commencing June 15, 2005, MEC began implementing this policy at each of its six (6) tracks in non-workers compensation states as each track commenced its live racing meet. As part of this process, MEC has sat down with owners and trainers in each affected State to review this approach. The goal was to achieve consensus beforehand.

Where my other responsibilities did not allow me to meet with these groups prior to the commencement of the racing meet, MEC decided to implement the coverage on a temporary basis without requiring a co-payment. Accordingly, jockeys at MEC facilities have been riding with one million dollar accident coverage at the following locations as of the following dates:

Great Lakes Downs (MI)	:	June 15, 2005
Thistledown (OH)	:	June 15, 2005
Lone Star Park (TX)	:	June 15, 2005
Remington Park (OK)	:	August 5, 2005
Portland Meadows (OR)	:	October 22, 2005

The remaining track MEC has in a non-workers' compensation state is Gulfstream Park in Florida which will begin its live meet in January 2006.

Where state regulations precluded a mount fee approach, MEC has agreed to look at alternative mechanisms, such as payment from purse accounts, for an equivalent contribution. At the present time, a co-pay approach has been established in Michigan and Ohio. Discussions are ongoing in Texas and Oregon. MEC will be scheduling discussions with Florida Horsemen shortly and with Oklahoma Horsemen in the new year. MEC is also currently in discussions with the Jockey's Guild.

Future Initiatives

As recently as November 10, 2005, Mr. Staniusz met with AIG representatives to discuss the status of the development of loss control initiatives. From these discussions, it was apparent that AIG has been utilizing its experience data to analyze safety factors such as starting gates, rails, lighting, weather, visibility and equipment such as helmets and vests. It is anticipated that AIG will commence loss control inspections of MEC facilities covered by this program beginning in the New Year. Accordingly, the programs is now ready to take the next level.

Other Issues

1. **Exercise Riders**

At the time of the NTRA summit, there was discussion of a program to include exercise riders. The AIG program covers jockeys whether they are hurt in a race or exercising a horse in the morning. The policy does not cover pure exercise riders.

At the time this program was being developed, there was simply insufficient experience data for the insurance industry to determine appropriate costs. Whenever insurers do not have sufficient information, they hedge their bets by raising their quotes. Since the pressing issue at the time was the situation of jockeys, it was determined to exclude exercise riders.

MEC believes that as insurers become more educated about the risk factors associated with exercise riding and as more experience data becomes available, this issue of exercise riders could be addressed.

2. **Workers' Compensation**

Many believe that workers' compensation is the solution to the issue of Jockey Accident Coverage. It well may be.

I would caution all participants in these hearings that workers' compensation is not free. The costs associated with workers' compensation regimes in the major racing states are expensive, even after one takes account of subsidies, preferred premiums and other mechanisms employed to reduce costs.

The approach tabled jointly by CDI and MEC in February was designed to be affordable at every track in the United States. Experience has shown that the costs associated with a Workers' Compensation regime, whether borne by tracks, trainers or other stakeholders, will be far more onerous and quite likely unaffordable in smaller racing markets.

3. **The "Jockey as Employee" Issue**

The Jockey is licensed by the State Racing Commission. Provided he or she has not committed any misconduct, a licensed jockey has access to the track, its backstretch and the jockeys' room.

It is the trainer who retains a jockey to ride a horse. It is the trainer who pays the mount fee to the jockey. The jockey receives his / her purse money usually on a customary basis of 10% of the purse for a win, 7% for place (2^{nd}) and 5% for show (3^{rd}). However, this customary basis for purse payment is subject to negotiation between the trainer and the jockey.

If a jockey is not retained to ride by any trainer, would the jockey be entitled to payment of the minimum wage from the track? If the jockey is an employee, that would be the case.

But a jockey who cannot get any rides is an underperformer. An employer is usually able to discharge an underperforming employee. In the case of jockeys, however, it is the state regulator who determines qualification.

Further, what happens if this "jockey as employee" is fired by the "track as employer" for non-performance but is given a mount by a trainer the next day? Can the track dictate to a trainer that the trainer cannot retain this jockey? Can the track avoid terminating this "jockey as employee" by forcing trainers to give him rides?

This is simply one hypothetical example that MEC submits should cause this Subcommittee, and any other body, such as the NLRB, reviewing this issue, to take pause before going too far down the road in concluding that "jockeys as employees" is the solution to all the difficulties jockey face.

4. **NIOSH**

As outlined in this testimony, MEC has demonstrated its commitment to safety. The issues raised in this Subcommittee's letter to Secretary Leavitt , however, involve issues of complexity which are of interest to trainers and horse owners, not just only to jockeys and the tracks.

MEC would encourage NIOSH to seek input from all stakeholders groups in conducting any evaluation of standards.

Conclusion

Mr. Chairman and distinguished members, in conclusion, I firmly believe that this industry is moving in the right direction regarding the specific issues of jockey accident insurance. As in any process, industry leaders must show the way. MEC believes that it and CDI took a responsible approach to addressing the immediate needs arising from inadequate jockey accident insurance. Pointing fingers as to how this situation arose does not help any injured jockey or his or her family.

A federal law providing workers' compensation will in all likelihood take years; but jockeys will be riding horses tomorrow. What is available today should meet the needs of all stakeholders in non-workers compensation jurisdictions.

If all stakeholders are willing, adequate medical insurance is affordable for every track. MEC encourages all stakeholders to work with the broad principles of our approach to obtain a viable solution at the local level. MEC believes that the stakeholders in this industry will reach an optional solution in short order. To suspend this process to await federal legislation will not be in the best interests of the jockeys.

In conclusion and on a personal note, I am sincerely grateful to have found myself in a position of responsibility where I could contribute to the safety and security of jockeys and their families.